



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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J. LEE COMPTON
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

April 5, 2007

Hon. Amanda M. Burden, AICP
Chair, City Planning Commission
Calendar Information Office
22 Reade Street, Room 2-E
New York, NY 10007-1216

Re: Application N 070196 ZCM for certification pursuant to Zoning Resolution Section 81-744(a) for transfer of development rights from 302 W. 45th St (Hirschfeld/Martin Beck Theater) to 131-139 W. 45th St.

Dear Chair Burden:

Representatives of Extel West 45th LLC, Fifth Street Holdings, LLC and Jujamcyn Theaters LLC attended the meeting of this Board's Clinton/Hell's Kitchen Land Use Committee on March 14, 2007 to present their application for certification by the City Planning Commission pursuant to Section 81-744(a) of the Zoning Resolution to allow the transfer of 8,483 square feet of floor area from the Hirschfeld (formerly Martin Beck) Theater at 302 West 45th Street to property at 131-139 West 45th Street in connection with a proposed mixed use building.¹ The proposed building has not yet been designed nor has its use been determined, but the applicants estimate that it will be approximately 56 stories tall and that its likely use will be as a hotel or as a hotel with residential use.

The development rights that are proposed to be transferred are all of the Hirschfeld Theater's unused development rights that remain after the transfers permitted last year pursuant to Applications N 060393 ZCM and N 060433 ZRM.

Floor Area Transfer. We agree with the applicants' statement of the technical findings about the amount of floor area to be transferred (findings (1), (2) and (3)), and further agree that the transfer to the proposed development site appears to be appropriate in light of the character of the surrounding area. However, since the proposed development site is in Community District 5, we defer to Board 5's judgment on this aspect of the application.

Continuance of legitimate theater use. Finding (4) requires assurances for continuance of legitimate theater use. These assurances have been provided by the Declaration of Restrictions made in connection with last year's transfers. The declaration must, however, be amended to apply for the life of this new development as well as the developments involved in the previous transfers.

¹ The application also seeks certification to allow the transfer of development rights from the St. James Theater at 246 W. 44th Street, which is in Community District 5; we make no comment on that portion of the application.

Theater Subdistrict Fund contribution. Finding (5) requires a contribution to the Theater Subdistrict Fund that was to have been established pursuant to Section 81-741. The 1998 Eighth Avenue rezoning called for the creation of a Theater Subdistrict Council. The Theater Subdistrict Council, in turn, was to have established the Theater Subdistrict Fund for deposit and administration of the revenues generated by the payments required by Section 81-744. Last year's applications were the first attempted use of transfers allowed by Section 81-744, and neither the Theater Subdistrict Council nor the Theater Subdistrict Fund had been established. The applicants were therefore allowed to deposit their required payments in escrow, while a public discussion ensued about how the requirements of the Zoning Resolution would be implemented. To our relief, the Department of City Planning ultimately agreed that the Council and the Fund would be established consistent with the requirements of the Zoning Resolution.

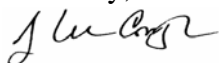
To date, however, the Theater Subdistrict Council and the Theater Subdistrict Fund still have not been established, and the applicants once again propose to deposit the required payment in an escrow account, to be held by the applicants' lawyers and paid to the Theater Subdistrict Council once the Theater Subdistrict Fund has been established. We have received a letter from DCP's Counsel dated March 12, 2007 reporting that DCP "is working to establish the TSC consistent with the requirements of the Zoning Resolution," but that "the formation of the TSC has proved to be more complex than originally anticipated." Counsel anticipates being able to convene an organizational meeting in the early spring.

We urge the Department to make every effort to complete formation of the Council and the Fund in time to receive the payment required by this application. The payment should go directly into the fund, and should not be escrowed.

Further zoning amendment. A small portion of the Special Clinton District (three blockfronts on the west side of Eighth Avenue between 43rd and 45th Streets) was included in the Theater Subdistrict of the Special Midtown District so that the Martin Beck Theater could be included in the theater development rights transfer scheme of Section 81-744. When the transfer contemplated by this application has been made, no development rights will be available for transfer from the Hirschfeld/Martin Beck Theater, so there is no longer any need for the Theater Subdistrict to extend into the Special Clinton District. We therefore request DCP to undertake a subsequent amendment of the zoning map to eliminate the extension of the Theater Subdistrict west of Eighth Avenue.

We are grateful for your consideration of our comments.

Sincerely,



J. Lee Compton
Chair
Manhattan Community Board 4



Anna Hayes Levin
Co-Chair
Clinton/Hell's Kitchen Land Use

Cc: electeds
CB5
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